

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO**

TAMMIE SEBASTIAN,
6814 Revere Drive
Parma Heights, Ohio 44130

Plaintiff,

vs.

PARMA CITY SCHOOL DISTRICT,
5311 Longwood Avenue
Parma, Ohio 44134

and

**PARMA CITY SCHOOL DISTRICT
BOARD OF EDUCATION,**
5311 Longwood Avenue
Parma, Ohio 44134

and

AUDREY HOLTZMAN,
2305 Champion Trail
Twinsburg, Ohio 44087

and

CHARLES SMIALEK,
16824 Holbrook Road
Shaker Heights, Ohio 44120

Defendants.

CASE NO.:

JUDGE

COMPLAINT

Jury Demand Endorsed Hereon

Now comes Plaintiff Tammie Sebastian, by and through undersigned counsel, and for her Complaint against Defendants Parma City School District, Parma City School District Board of Education, Audrey Holtzman, and Charles Smialek, states the following:

PARTIES

1. Plaintiff Tammie Sebastian is an Ohio resident, residing at 6814 Revere Drive, Parma Heights, Ohio 44130 and a parent of a child attending school in the Parma City School District.
2. Defendant Parma City School District (hereinafter “the District”) is a political subdivision of the State of Ohio and has its principal place of business at 5311 Longwood Avenue, Parma, Ohio 44134.
3. Defendant Parma City School District Board of Education (the “Board”), with its principal place of business located at 5311 Longwood Avenue, Parma, Ohio 44134, is a public entity which, acting under color of law, is responsible for the formulation and implementation of all official governmental laws, policies, regulations and procedures in effect for the District.
4. Defendant Audrey Holtzman, who is being sued in her official capacity only, is the District’s Administrative Specialist for Enrollment and Recruitment and resides at 2305 Champion Trail, Twinsburg, Ohio 44087.
5. Defendant Charles Smialek, who is being sued in his official capacity only, is the District’s Superintendent and resides at 16824 Holbrook Road, Shaker Heights, Ohio 44120.

JURISDICTION AND VENUE

6. Jurisdiction is proper in this Court pursuant to 28 U.S.C. §1331 and 28 U.S.C. §§2201-2202.
7. Venue is appropriate in this Court pursuant to 28 U.S.C. §1391(b) as the events that gave rise to this action occurred in Cuyahoga County, State of Ohio, which lies within the jurisdictional boundaries of the United States District Court, Northern District of Ohio.

GENERAL ALLEGATIONS

8. Plaintiff operates a Twitter account under the handle @matmat71.

9. Defendant Holtzman operates a Twitter account under the handle @audrey_holtzman.
10. Twitter is a social media platform that allows its users, through a user's account handle, to publish short messages (known as "tweets") limited to 240 characters; to "retweet" (i.e., republish) or reply to other users' messages; and to interact with other users in relation to those tweets.
11. A Twitter user's webpage shows all tweets made by the user and is known as a "timeline."
12. A user's most recent tweets appear at the top of the timeline.
13. A user's tweets can include photographs, videos, and links.
14. Twitter's default setting makes a user's timeline accessible to anyone with internet access, even individuals who do not have a Twitter account.
15. Twitter users can "follow" (i.e. subscribe to) other users.
16. A follower can see all tweets and retweets of the Twitter accounts that they follow.
17. The tweets and retweets of the accounts being followed are shown on the user's home page and are known as a "feed."
18. Twitter users can also reply to other users who reply to a tweet or retweet.
19. The replies to other users are known as a "thread."
20. Twitter users can also "favorite" or "like" tweets from other users by clicking on a heart icon that appears below the tweet.
21. Twitter users can "mention" or "tweet at" other users by including the other user's account handle in a tweet.
22. When a Twitter user is mentioned in a tweet, that user receives a "notification" of that mention.
23. Twitter users also receive notifications when a tweet of theirs is retweeted.

24. If a Twitter user wishes to change the default public setting regarding their Twitter page, they can make their tweets “protected.”
25. If a Twitter user wishes to view protected tweets, they must request access from the user who has protected his tweets.
26. Protected tweets are only seen by the user and any approved followers.
27. A Twitter account that is not protected can still prohibit other users from seeing their tweets by “blocking” that user.
28. It is the Twitter user herself that makes the decision whether to block another user.
29. A blocked user cannot interact with the Twitter user who engaged the blocking feature.
30. A blocked user cannot see, reply to, or retweet the Twitter user who engaged the blocking feature.
31. A blocked user cannot view the list of followers or followed accounts of the Twitter user who engaged the blocking feature.
32. The Twitter user who engaged the blocking feature will not receive any notifications if the blocked user mentions them.
33. The Twitter use who engaged the blocking feature will not see any tweets posted by the blocked user.
34. If the blocked user attempts to follow the blocking user, or to access the Twitter page from which the user is blocked, the blocked user will see a message indicating that the other user has blocked her from following the account and viewing the tweets associated with the account.
35. Defendant Holtzman established the Twitter account @audrey_holtzman in July 2011.

36. Upon information and belief, upon being hired by the Parma City School District in July 2019, Defendant Holtzman began to use her account as an instrument of her job and used it as a channel for communicating with the public about the District and the Board.

37. Through Defendant Holtzman's use of the account, it has become a forum for news and information about the District and the Board.

38. Defendant Holtzman's account is accessible to the public at large without regard to any limiting criteria.

39. Defendant Holtzman has not "protected" her tweets.

40. Anyone who wants to follow Defendant Holtzman's account may do so.

41. The only users who cannot follow @audrey_holtzman are those whom Defendant Holtzman has blocked.

42. Plaintiff is a Twitter user, with the handle @matmat71, who has been blocked by Defendant Holtzman and the remaining Defendants from the @audrey_holtzman account.

43. Defendant Smialek told Plaintiff on September 9, 2019, that Defendant Holtzman blocked Plaintiff from the @audrey_holtzman account at the directive of Defendant Smialek.

44. Defendants' blocking of Plaintiff from the @audrey_holtzman account prevents and/or impedes Plaintiff from viewing Defendant Holtzman's tweets about the District and the Board; from replying to those tweets; from viewing the comment threads associated with those tweets; and from participating in the comment threads.

45. Plaintiff was blocked from the @audrey_holtzman account because she has been a longtime critic and watchdog of the District and the Board.

46. Defendants' viewpoint-based blocking of Plaintiff from the @audrey_holtzman account infringes on Plaintiff's First Amendment rights.

47. Defendants' viewpoint-based blocking of Plaintiff from the @audrey_holtzman account imposes an unconstitutional restriction on her participation in a designated public forum.

48. Defendants' viewpoint-based blocking of Plaintiff from the @audrey_holtzman account imposes an unconstitutional restriction on her access to statements that Defendants are otherwise making to the general public.

49. Defendants' viewpoint-based blocking of Plaintiff from the @audrey_holtzman account imposes an unconstitutional restriction on Plaintiff's right to petition the government for redress of grievances.

COUNT I
Violation of the First Amendment of the United States Constitution
Declaratory and Injunctive Relief

50. Plaintiff repeats and alleges paragraphs 1 through 49 as though fully set forth herein.

51. Defendants' blocking of Plaintiff from the @audrey_holtzman account violates the First Amendment because it imposes a view-point based restriction on Plaintiff's participation in a public forum.

52. Defendants' blocking of Plaintiff from the @audrey_holtzman account violates the First Amendment because it imposes a view-point based restriction on Plaintiff's access to official statements of the District and the Board that Defendants otherwise make available to the general public.

53. Defendants' blocking of Plaintiff from the @audrey_holtzman account violates the First Amendment because it imposes a view-point based restriction on Plaintiff's ability to petition the government for redress of grievances.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants accordingly:

- A.) Declare Defendants' viewpoint-based blocking of Plaintiff from the @audrey_holtzman account to be unconstitutional;
- B.) Enter an injunction requiring Defendants to unblock Plaintiff from the @audrey_holtzman account and prohibiting Defendants from blocking Plaintiff or others from the account on the basis of viewpoint;
- C.) Award Plaintiff her costs, including reasonable attorneys' fees, pursuant to 28 U.S.C. §2412; and
- D.) For any other relief that the Court deems just and appropriate.

Respectfully submitted,

/s/ Matthew B. Abens

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